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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
On March 9, 2021.

Date of Meeting: December 1, 2020

**MEETING NOTE: Due to the impacts of the COVID-19 pandemic, which prompted declarations of a public health emergency at the local, state and federal levels, this meeting was conducted using measures to protect public health. This meeting was held remotely through technological means, as permitted under Arizona law.**

The Mayor and Council of the City of Tucson met in regular session remotely through Microsoft Teams at 5:02 p.m., on Tuesday, December 1, 2020, all members having been notified of the time and place thereof.

### 1. ROLL CALL

The meeting was called to order by Mayor Romero and upon roll call, those present and absent were:

Present:

Lane Santa Cruz  
Paul Cunningham  
Nikki Lee  
Richard G. Fimbres  
Steve Kozachik  
Regina Romero

Council Member Ward 1  
Vice Mayor, Council Member Ward 2  
Council Member Ward 4  
Council Member Ward 5  
Council Member Ward 6  
Mayor

Absent/Excused:

Paul Durham

Council Member Ward 3

Staff Members Present:

Michael J. Ortega  
Michael Rankin  
Roger W. Randolph

City Manager  
City Attorney  
City Clerk

2. **ORDINANCE: PROVIDING FOR PUBLIC HEALTH AND SAFETY AND TO PREVENT THE SPREAD OF INFECTIOUS DISEASE; AFFIRMING THAT THE LOCAL EMERGENCY DUE TO COVID-19 CONTINUES TO EXIST; SUPPORTING AND APPROVING MAYOR ROMERO'S PROCLAMATION OF EMERGENCY ORDERING A CURFEW AND ADVISING TUCSONANS THAT IT IS SAFER AT HOME AND TO AVOID SOCIAL GATHERINGS, AND REQUESTING THAT THE GOVERNOR ISSUE NECESSARY ORDERS STATEWIDE (CITY WIDE AND OUTSIDE CITY) DEC01-20-417**

Introductory comments were made by Mayor Romero on the rise of COVID-19 cases in City of Tucson and Pima County. She expressed she was very alarmed by what public health experts and officials shared with the community regarding the growing surge in COVID-19 cases. She reviewed the numbers for that day:

- nine hundred forty-four new cases in Pima County which set a new record for the County,
- 8.4% positivity rate in diagnostic testing,
- more than six hundred ninety-five deaths,
- cases had more than quadrupled from October to November as of the previous Friday.

Mayor Romero said that the County recorded its highest weekly case count with over three thousand, six hundred cases in the previous week, which was nearly forty percent higher than the last record in July. She recounted that the Arizona modeling team warned the Arizona DHS in a letter that if nothing was done hospitals would be forced to decide who would get care and who would not, more Arizonans would die and it could be a catastrophe on the scale of the worst natural disaster the state had ever seen.

Mayor Romero stated she believed the Mayor and Council had the authority to take a step to mitigate the tragedy. She invited a few people to present to the Council during the meeting to set the stage for the discussion.

Judy Rich, Tucson Medical Center (TMC), President and CEO, thanked the Mayor and Council and commented on the extraordinary impact COVID-19 had on the way people worked, lived, learned and died. She stated that they were well into the third wave of the pandemic in Arizona and Tucson and that four weeks prior TMC had twenty-five percent of the COVID-19-positive patients that day in Pima County. She said the intensive care unit at TMC was at capacity and every week they were opening another unit inside the hospital to manage COVID-19 patients. T

Ms. Rich reported that the nurses, doctors and staff on the frontline were put at risk to care for the most complex patients, facing impossible situations daily that they would carry with them for many years to come. She noted that patients were too-often dying, and their families were not able to be with them. She thanked the Mayor and Council for discussing steps to mitigate the third wave until a vaccine would be available. She stated that the curfew would fall short in terms of flattening the curve or slowing the

spread of the virus regardless of the implemented curfew time of 8:00 p.m. or 10:00 p.m. She said it would not prevent hospitals from being pushed beyond capacity.

Ms. Rich stated that mask mandates were successful in the past but that adherence to them had waned as people grew tired of the mitigation measures. She said that stricter measures like those implemented earlier in the year would be the only way to avoid the impending crisis. She recognized that the City of Tucson might not have the authority to implement those measures but that it should be the position of the City to advocate for them to State officials and such action should be accompanied by economic relief to businesses as a result of said action. She reiterated the importance of individual action for community members to stay safe and protect others. She concluded that if action was not taken that day, the crisis would grow and result in unnecessary illness and deaths.

Dr. Sudha Nagalingam, El Rio Health Clinic, Infections Disease Physician thanked Mayor Romero for the chance to share about conditions on the ground at El Rio Health Clinic. She stated that El Rio provided care for about 115,000 people in Tucson and Pima County and they tested more than ten percent of people living in Pima County. She stated that positivity cases were staggering over the previous week or two and that testing was at about a six percent positivity rate in early October and had been at twenty-two percent over the past two weeks. She continued saying that El Rio has sent out advisory newsletters to patients and community members to share the numbers and advocate that they continue to practice social distancing and precautionary hygiene.

Nancy Johnson, El Rio Health Clinic, RN, PHD and Chief Executive Officer, thanked the Mayor and reiterated Dr. Nagalingam's concerns regarding community members feeling like the pandemic will not impact them. She said they also sent out a community bulletin to their media contacts that day and concluded her remarks.

Mayor Romero reiterated that she knew everyone was very tired of all of the mitigation measures taken thus far and she wanted to begin the meeting with the presenters to emphasize the dire circumstances that the community was facing due to the surge in the pandemic numbers. She stated the Mayor and Council needed to take additional steps to protect the community and that the City Charter and City Code gave them that authority to institute a curfew for the City.

Mike Rankin, City Attorney, stated he would first explain the Proclamation and Ordinance that the Mayor and Council were considering and then he would explain why he believed they had the authority to institute such a curfew. He said that the Ordinance the legislative body was considering would reaffirm that the COVID-19 pandemic remained an ongoing local emergency, supported and approved the issuance of a Proclamation of Emergency by Mayor Romero that would order a limited and temporary emergency curfew, and would advise Tucsonans that it was safer to stay at home and avoid social gatherings. He said that it made certain findings that the provisions of the Proclamation and Ordinance were necessary and expedient for the preservation of health and suppression of disease and to prevent the further spread of COVID-19.

Mr. Rankin said the Ordinance and Proclamation requested that Governor Ducey issue orders statewide that were necessary and reasonable to mitigate the spread of COVID-19. He said the Ordinance was written so that if adopted it would become effective immediately. He advised the Mayor and Council of an addition he wanted to read into the record for their consideration for inclusion in the Ordinance that addressed specifically what penalty would be imposed if a person violated the curfew regulations.

Mr. Rankin stated that the Ordinance would be amended to provide a new section number 4 that read as follows, "The provisions of Section 3, Curfew Ordered, of the Proclamation are incorporated into and made part of the Ordinance. By adoption of this Ordinance the Mayor and Council establish that a violation of the regulations established in Section 3 of the Proclamation and adopted as part of this Ordinance is a civil infraction and is subject to a civil sanction not to exceed three hundred dollars." He said a related change would be made in Section 6 of the Proclamation to remove any reference to misdemeanor prosecution. He said that the purpose was to establish violations as civil infractions as opposed to criminal violations which was the default penalty under State law, since the Mayor and Council were acting as a local legislative body.

Mr. Rankin explained that as presented, the adoption of the Ordinance, which would approve the proclamation, would establish a curfew starting at 8:00 p.m. that ran through December 22, 2020 with the hours of the curfew each day implemented between 8:00 p.m. and 5:00 a.m. He stated it was critical to note it was not just a blanket curfew that required people to do nothing but stay at home or prevented people from doing any essential activities. He pointed out the curfew did not order the closure of any business at any particular time, but instead it regulated when people can be in public places, including traveling on public streets, and did not, as presented, prevent people from traveling to or from any essential activity or essential functions, even during the curfew hours.

Mr. Rankin said essential activities were defined in the prior statewide order and those activities were exempted from the proposed curfew that the Mayor and Council were considering, which meant even if it were adopted people would be able to travel to and from all of the following: any healthcare facility, care facility for seniors or people with disabilities, any shelter; any essential business very broadly defined including stores that sell groceries, stores that sell medicine, (grocery store, convenience store, pharmacy, market or similar); businesses that provide charitable or social services (food bank, nonprofit agencies, shelter services, etc.), gas stations, auto supply stores, auto repair shops, financial institutions, hardware and supply stores, restaurants for consumption off-premises, (meaning even during curfew hours patrons could get delivery, takeout, curbside, drive-through); business that sell home supplies including appliances or necessary items for homes or home businesses, hotels or motels.

Mr. Rankin explained essential activities were also exempted, including: obtaining necessary supplies for families, household members and pets including groceries, food and supplies for household consumption; seeking medical health or emergency healthcare services; engaging in providing care for a family member, friend or

pet in another residence if it was your responsibility; engage in outdoor exercise; travel to and from work. He stated the curfew did not apply to first responders (police, fire and other); going to and from attending religious services; houseless people who may not have an alternative to being in a public place; and operations on the Davis-Monthan base because it was a federal facility and thereby exempt.

Mr. Rankin explained the legal authority for the Mayor and Council to adopt the legislation and then for the Mayor to execute and issue the Proclamation came from multiple sources including: the City Charter, which he said was important in multiple ways like the power of the Mayor to execute orders in an emergency, the power that it gave to the legislative body of the Mayor and Council to make, enact and enforce regulations that were necessary to prevent the spread of infectious disease; State law which provided powers for emergency regulation by the City, executed by the Mayor after an emergency declaration had been approved by ordinance or resolution and which expressly included the provisions of a local curfew within the City; and City Code relating to the power during a local emergency and the power to issue a curfew through a Mayoral Proclamation.

Mr. Rankin discussed emails and phone calls the Mayor and Council received during the pandemic which referenced the Governor's Executive Order and stated local governments could not act beyond what the Governor issued in that order. He stated in his legal opinion the Governor could not use his authority through an Executive Order to void other laws or to eliminate the legislative power legally given to local jurisdictions through statute or to void the provisions of a City Charter. He explained as part of the litigation that arose out of challenges to the Governor's Executive Orders over the past seven months, the Court determined that he lacked the authority through his Executive Orders to void another state law or to eliminate the requirements of another state law.

Mr. Rankin said that the Governor had emergency powers too and by approving the Ordinance the Mayor and Council would be asking him to use those emergency powers but he did not have the authority to eliminate other statutes including those that would grant the Mayor and Council their emergency powers. He concluded saying it was important that if the Ordinance moved forward as presented or with his suggested additions that it incorporate justification for those actions including the testimony provided that night which would provide additional record with respect to the current condition of a local emergency in the City of Tucson. He thanked the Mayor and offered his availability to answer questions as they arose.

Chad Whelan, Banner – University Medical Center CEO, thanked the Mayor for the opportunity to share what they had seen at Banner UMC in the past few weeks. He said the increasing rates of COVID-19 coupled with seasonal illness had reached a critical point and that as the surge continued hospitals throughout Tucson and the country were very concerned about being overwhelmed and shortage of healthcare workers would make it difficult to handle the increased number of patients. He said they knew mitigation worked and when the State issued a stay-at-home order, they saw a plateau in COVID-19

cases. Similarly, when masking mandates went into effect, they saw a decrease in the summer surge.

Mr. Whelan said they realized the mandates and recommendations impacted more than just businesses and emotional sense of wellbeing, but the reality was that they were in the middle of an unprecedented pandemic that made those difficult decisions necessary. They needed community members to be patient and do their part as hospitals continued to fight the virus. He said their frontline workers were doing a phenomenal job, but they could not do it alone and they must support measures such as curfews to slow the spread of COVID-19. He concluded with reiterating thanks.

Mayor Romero reiterated gratitude and despite being tired of the pandemic and the mitigation efforts, they were all in it together, and as elected officials of their community, they had a moral obligation to take necessary steps to prevent a continued surge of COVID-19. She invited comments, input and questions from her colleagues.

Council Member Lee asked if they had heard anything from Governor Ducey regarding the use of the Tucson Convention Center (TCC), additional capacity, shortages of beds and workers.

Michael J. Ortega, City Manager, stated he had not heard anything directly at that point. He knew the Mayor had reached out to the Governor's Office and said they were continuing to monitor for a response and would keep the Council Members up to date, but they had received no additional direction.

Mr. Rankin added the agreement to allow the use of the TCC for additional capacity had been approved and was in place so that if and when the need arose for it the TCC would be ready.

Mr. Ortega explained the City was ready to go and he anticipated the protocols would be that the Mayor's office would be contacted as the Chief Executive Officer and then they would get moving upon direction.

Council Member Fimbres asked if they had heard anything about the emergency bed situation and thanked Judy Rich for addressing them. He asked if they would call off elective surgeries to make more beds available. He expressed admiration and thanks for the nurses and medical professionals throughout the City.

Ms. Rich stated they were being very deliberate about who went to the operating room for surgery. They had metered the patients who needed the intensive care unit (ICU) which forced them to make decisions about who needed surgery. She also said it was never about beds, but it was always about staff.

Council Member Santa Cruz expressed empathy for the general fatigue regarding the pandemic and stated that what moved them most was the appeal from healthcare professionals and those taking care of the community during that time. She stated further

that mitigation efforts such as stay at home orders would be challenging and that everyone was patiently waiting for a vaccine and expressed further gratitude to the healthcare workers.

Mayor Romero said it was much better to have a statewide approach for mitigation strategies because Tucsonans did not live in a bubble. She said she saw this as an initial step to continue trying to work with the Governor's Office and that healthcare professionals throughout the state were also advocating for statewide measures. She said in the absence of a statewide action, she saw the local curfew as an initial step that could be taken. She stated she had spoken with the Pima County Board of Supervisors and they were willing to move on their voluntary curfew and were determining whether or not they could make it mandatory, but were willing to make it align with the City's curfew in terms of the curfew time.

Vice Mayor Cunningham stated there were a few issues that needed to be addressed. He said it had been a very trying day and he received a number of calls from people expressing disappointment in the Mayor for having that discussion but he applauded the Mayor and said they needed to have the discussion because they faced the risk of the entire public health system in Pima County failing in about a week. He said it could be a moot point because there were other places in the state that might have no choice in a week or two and that it was their obligation to have the discussion. He stated they had to face the facts that at the beginning of the month one hospital had four COVID-19 patients total and then had eighty-five patients thirty days later, creating a two thousand percent increase.

Vice Mayor Cunningham also stated that they had to consider the message they would send the healthcare workers if they did nothing. He said there was very little scientific evidence that curfews did much good or bad but some that showed they did ok. He researched the data dashboards from Pueblo, Colorado; Bridgeport, Connecticut; and El Paso, Texas and found when those cities faced similar spikes in cases and curfews were implemented, cases continued to rise for about a week and then went back down. He continued to discuss the ordinance and stated he did not intend disrespect to the Mayor or City Attorney. He said he agreed with the intent but also thought it left much to be desired and the specific timing of the curfew might have unintended consequences and required nuance because as written it would likely single out certain businesses.

Council Member Cunningham explained that the cities he referenced before set their curfews at 10:00 p.m. because setting it earlier required certain businesses to eliminate an evening work shift which caused certain people who went back to work to be downsized and be ineligible for unemployment benefits. He gave examples of bowling alleys, bars, late night restaurants, after-work places, theaters and arcades and said that a 10:00 p.m. curfew would allow those businesses to continue to operate and would be cleaner in terms of matching up with the County's voluntary and possible mandatory curfew.

Vice Mayor Cunningham said it was hard to tell working families that they would be subject to a curfew twenty-eight days before the eviction moratorium expired and that he felt more comfortable with that if a second Heroes' Act had been passed but it had not. He said having the only mandatory curfew in the state displayed that action but starting the curfew at 10:00 p.m. instead of 8:00 p.m. would provide relief for business owners who would otherwise suffer. He said a 9:00 p.m. compromise would not work because shift workers still needed the extra hour. He concluded they could not count on or expect any action from the State or Federal governments.

It was moved by Vice Mayor Cunningham that they adopt a mandatory curfew that was consistent with the materials they were already considering except that the effective date would change to December 5, 2020 and the time would change to 10:00 p.m. He said that the changed effective date would allow business to make plans for personnel changes and use perishable foods. He made two additional caveats including that the City allotted \$2.5 million of the remaining CARES Act funds to be distributed to businesses that would be most affected by a curfew including restaurants, bars, theaters, bowling alleys and arcades and that they provide a flexibility of enforcement for business patrons and later workers so that they could travel home after their shift without fear of their civil liberties being encroached upon.

Mayor Romero stated that a \$9 million economic package was on the agenda as the second item and that there would be continued discussion around economic relief as they considered different mitigation strategies. She said that it included other businesses and childcare.

Council Member Kozachik thanked the healthcare officials that spoke for their perspective and Mr. Rankin for pointing out that they were not talking about martial law or a lockdown rather having a discussion about pre-vaccine protocols to put in place to get across the finish line that no one could predict. He asked Ms. Rich to outline the presentation that they were going to give to the Governor.

Ms. Rich said the letter was in the hands of Dr. Cara Christ, the physician in charge at the State level, and it outlined specific requests for eliminating large gatherings, indoor dining and several other caveats including a curfew. She said it came from chief medical officials of the hospitals in the state including Chad Whelan.

Mayor Romero asked what time the letter recommended for instituting a curfew.

Ms. Rich said the state recommendations from chief health care officials was 8:00 p.m.

Council Member Kozachik asked how of the medical officials decided on 8:00 p.m.

Mr. Whelan said the conclusion was led by the chief medical officials and they relied heavily on an article that was published in the scientific journal *Nature* that



discussed mitigating factors and their successes and asserted curfews were an effective mitigating factor especially when coupled with others. He said he did not know exactly how they got to that particular cut off time for the article in *Nature* and explained that *Nature* was the preeminent scientific journal.

Council Member Kozachik expressed appreciation for all the comments made so far and reiterated that he had also heard from a lot of people including bar owners, the Metro Council and others. He said he had not yet heard from healthcare professionals because they were too busy caring for patients and the community and described their role in caring for patients who die without family by their side. He reiterated the conditions of the surge in COVID-19 cases and its effect on the hospitals' capacity and upon healthcare workers that were reflected in the presenters' comments. He said the numbers were only going up and the Mayor and Council had to do something.

Council Member Kozachik responded to the Metro Chamber representatives who reached out to him and said that business was not going to go back to normal until COVID-19 was under control and that it would not be under control as long as they were taking half measures and relying on other people's judgement who were treating it as if it were a bad flu. He said that people showed over Thanksgiving that they would not voluntarily comply with direction from healthcare officials and they all watched millions of people pack into airports so they had to act but that it was also probably too little too late to avoid seeing an escalation in the infections and mortality that would continue through Christmas and beyond. He said he did not want to sound heartless but responded to bar owners that their selling whiskey late into the night was not as important as protecting the healthcare workers that they relied on.

Council Member Kozachik said no matter how they decided to proceed they were not being anti-business and that while he would be asking the City Manager during the next item on the agenda to allocate more CARES funding to support businesses, they were still not seeing leadership from the Governor's office who was saying, "We're open for business," and that everyone wants to be open for business, but the only business that was booming was the healthcare business which was bursting at the seams. He said they could not do nothing but whatever they did should be informed by healthcare officials and the information they received at their offices.

Council Member Kozachik reiterated that his office received calls from bars and restaurants indicating they had just made large purchase orders for perishables so he echoed Vice Mayor Cunningham's desire to be sensitive to that in considering how this would affect those businesses. He said they did not have the capacity to get money out the door overnight so whatever they did to allocate funding in the next agenda item needed to be coupled with some protocols to ensure the money was not held up by financial participation agreements and that recipients received it in a timely fashion since people would be facing loss of employment immediately if they acted on the curfew that evening.

Council Member Kozachik added the County could not shift to 8:00 p.m. immediately but the Mayor indicated they would be meeting to discuss their options on Friday so he suggested the Mayor and Council immediately adopt a 10:00 p.m. curfew and give the County time to react and adjust to it and then to institute an 8:00 p.m. curfew on Saturday night, roughly seventy-two hours later. He said that would allow businesses time to adjust and provide the City time to address how much money they had and how they were going to deliver it. He agreed that it had been a tough day and he appreciated that everyone wanted to do something about it even if the Mayor and Council did not agree on all the particulars.

Council Member Fimbres thanked the Mayor for her leadership and staff for getting the proclamation and ordinance ready. He said they had six hundred ninety Pima County residents that did not enjoy their Thanksgiving because they were victims to COVID-19, and it was important to do something to impress upon the rest of the state that things were only getting worse. He agreed with Vice Mayor Cunningham's motion and said the business community just got going again and needed support and that they could talk more about financials in the next item because he did not think it was enough.

Council Member Fimbres said he agreed with Council Member Kozachik that they needed to figure out a better way to get money dispersed instead of sitting around for thirty to forty days like they had. He seconded Vice Mayor Cunningham's motion for the curfew to be established on December 5, 2020 at 10:00 p.m. and added that there was still much to discuss.

Mayor Romero expressed support for giving some time to the business community but reiterated that every day they waited to act, cases were increasing, and fellow Tucsonans could end up in the local hospitals. She asked if, since the 8:00 p.m. hour was recommended by hospital CEO's and supported by scientific thought, could they at least consider a 9:00 p.m. curfew. She reiterated that Pima County was both willing to consider 8:00 p.m. and 9:00 p.m. start times and that they were listening to the meeting that night. She said if they were to institute the curfew time of 9:00 p.m. on the upcoming Friday it would coincide with Pima County's Friday meeting and would give restaurants time to serve their dinner time rush from 6:00 p.m. to 9:00 p.m. and would get people home where they were safer, according to the Governor and public health experts.

Mayor Romero said that in conjunction with the mitigation efforts they already had in place she thought that would help though she agreed with Ms. Rich and Council Member Kozachik when they said it was only a dent. She expressed her hope that the Governor would institute statewide measures, the least of which would be a statewide curfew and a mask mandate, though she acknowledged that hospital officials were asking for more, such as a stay-at-home order. She concluded that the least they could do as the City and County would be to protect their residents as much as possible and asked Vice Mayor Cunningham to reconsider his motion for 9:00 p.m. instead of 10:00 p.m., effective within the next seventy-two hours.

Council Member Kozachik asked the Vice Mayor how he felt about beginning at 10:00 pm and then rolling the curfew back to 9:00 p.m. after 72 hours.

Vice Mayor Cunningham said they could consider that, but they had to let the County do their thing, meaning if the County set the curfew at 9:00 p.m. at their meeting then the City could follow suit but the City could only do what was in front of them at that time and indicated the County had a voluntary curfew starting at 10:00 p.m. at that moment. He reiterated while he understood the argument for 9:00 p.m., part of the reason he proposed 10:00 p.m. was to protect workers who had stopped receiving unemployment benefits to rejoin the workforce and who could lose their p.m. shift if an earlier curfew was imposed. He said he was willing to follow the County and include that course as a fourth caveat within his motion.

Mayor Romero said she was trying to listen to the healthcare professionals and avoid confusion and her colleagues at Pima County were willing to follow the City so she was trying to establish a time they could adopt. She said they have acted and jumped for the benefit of their community before, without other jurisdictions, and it was better to act with other jurisdictions, so if they had the County willing to come along she believed it was better to institute an earlier time based on the opinion of the public health experts.

Council Member Santa Cruz said her understanding was also that the County was willing to complement whatever the City instituted that night and she also felt more comfortable with the 9:00 p.m. curfew as a compromise between what they were being asked by the healthcare professionals and the needs of business owners. She said in addition to the funds set aside for small businesses they were also allocating funds for workers and families to help alleviate the pressure for employees who work for small businesses that may be impacted. She reiterated she felt more comfortable with a 9:00 p.m. curfew and seventy-two hours to be coordinated with the County.

Council Member Lee expressed appreciation for the conversation and said her team did a lot of research that day on the positive and negative impacts for business owners so they could be prepared for the meeting. She suggested the City implement a voluntary 10:00 p.m. curfew until Friday since the County had a voluntary curfew at the same time. She stated they knew the County would be meeting on Friday so the County, City and constituents could all be on the same page as they figured out how to move forward. She said having different curfew times in different jurisdictions and including a seventy-two-hour limit on some would cause a lot of changes for people to track. She also heard from a lot of workers in the service industry who expressed feeling the brunt of the blame for the spread of the virus and asked if they could look at other businesses, hand sanitizing stations and other measures that did not just look at restaurants, it could go a long way when looking at mitigation steps and the curfew.

Mayor Romero said she would consider a motion and that she wanted to make sure the Council Members were on board with and in agreement moving forward.

It was moved by Vice Mayor Cunningham, duly seconded, that a 10:00 p.m. curfew be instituted for seventy-two hours and then roll it back to be consistent with what the County institutes during their meeting the following Friday. At the request of Mayor Romero, he re-stated his motion to include the following:

1. That the mandatory curfew be from 10:00 p.m. to 5:00 a.m. within the City Limits and be consistent with the curfew outlined in the material except for the time change and effective date.
2. That the effective date be Friday, December 4, 2020 at 10:00 p.m. and stay in effect until Wednesday, December 23, 2020. This would allow businesses to try and use their perishable inventory as well as give them some time to plan shift and personnel adjustments.
3. That the City allot \$2.5M of the remaining CARES Act Funds (CRF) for bars and restaurants. This is in addition to the Small Business fund.
4. That the City provide a flexibility of enforcement for business patrons and employees working late to travel home without fear of any encroachment of their civil liberties.
5. That if and when Pima County meets on this same curfew item and come up with a different curfew time, that the City adjust their time to match that of Pima County

Council Member Santa Cruz said she thought they had an opportunity to set the tone so that the County could follow suit and not the other way around. She still preferred a 9:00 p.m. starting on Friday if they could coordinate with the County to get that time.

Mr. Rankin asked if the motion would include his suggested change to make the offense a civil infraction.

Vice Mayor Cunningham affirmed that it would be consistent with the presentation Mr. Rankin made and the materials as presented.

Mayor Romero asked Vice Mayor Cunningham if he would consider moving the start time to 9:00 p.m. so the County could follow suit.

Vice Mayor Cunningham denied the request to consider changing the time to 9:00 p.m. and stated his hard line was 10:00 p.m. because of how the extra hour would affect the p.m. shift for many workers. He said they would be doing more harm than good, and he would not accept it as a change.

Council Member Kozachik expressed appreciation for the discussion and the healthcare professionals that joined in and were also watching and listening. He said they had to be careful that the cure was not worse than the disease and had to consider the

impact to small businesses, lean in and give them a chance to adjust or they would be picking up a lot of collateral damage pieces they did not want to face either.

Mayor Romero said she liked being able to be flexible with the small businesses and she knew they were all going through a difficult time but the hospitals were being overwhelmed and so they needed to take decisive and quick action. She would have preferred an 8:00 p.m. curfew like the healthcare professionals throughout the state were asking Governor Ducey to implement but she also understood the input from the community and wanted to make sure her colleagues on the Council were happy, on board and in solidarity with whatever decision was made. She said any step they took would be much better than doing nothing.

Mayor Romero announced City Manager's communication number 417, dated December 1, 2020 was received into and made part of the record. She asked the City Clerk to read Ordinance 11808 by number and title only.

Ordinance No. 11808 relating to Public Health and Safety and the Prevention of Community-Based Spread of Infectious Disease; finding and reaffirming that the COVID-19 Pandemic constitutes a continuing local and civil emergency; reserving City and Mayor and Council authority to make and adopt additional regulations; and declaring an emergency.

Roger W. Randolph, City Clerk, stated Ordinance also included the amendment as read into the record by the City Attorney.

Mayor Romero asked for any additional comments from the City Attorney.

Mr. Rankin responded if the motion as made was approved then they would revise the Ordinance and Proclamation to be consistent with what was attached to the Ordinance. He indicated he may have more to say after the action was taken.

The motion to pass and adopt Ordinance 18808 with the caveats made by Vice Mayor Cunningham and corrections read into the record by the City Attorney, was passed by a roll call vote of 6 to 0 (Council Member Durham absent/excused).

**3. CORONAVIRUS RELIEF FUND (CRF) MAYOR AND COUNCIL STRATEGIC PLAN AND EXPENDITURES (CITY WIDE) DEC01-20-418**

Mayor Romero announced City Manager's communication number 418, dated December 1, 2020, was received into and made part of the record. She also announced this was the time scheduled to allow the Mayor and members of the Council to discuss the Coronavirus Relief Fund and the Mayor and Council's Strategic Plan and Expenditures. She called upon the City Manager.

Michael J. Ortega, City Manager, referenced a memo he had circulated earlier and continued to explain the points contained therein. He first recommended an additional \$4

million through the end of December for testing, including a continuation of testing at Udall, an expansion of the El Pueblo Center testing and pop-up sites. The second recommendation was \$2 million for small business grants through the YWCA, which would modify the City's current financial participation agreement. Third was a recommendation for \$2 million for workers and families through the Women's Foundation, which was also based on the length of the pandemic and the need within the community. He said arts and entertainment venues, through the Arts Foundation of Tucson and Southern Arizona, were recommended to receive seven hundred fifty thousand dollars and childcare providers, through Catholic Community Services, were recommended to receive two hundred fifty thousand dollars. He said the recommended expenditures totaled \$9 million and it was important to note, especially considering Vice Mayor Cunningham's previous comments, that the recommendations were made based on the criteria previously established by the Mayor and Council for all the items.

Mr. Ortega said he was also seeking authorization from the Council to establish, revise, or amend the Financial Participation Agreements (FPA's) so he did not have to bring each FPA back to them for approval since that had been one of the logistical impediments to timeliness. He said since the agreements were already in place with the organizations, they were a lot easier to modify, unless the criteria for eligibility changed. He also provided the Mayor and Council with a summary sheet of the Coronavirus Crisis Reserve Allocation and reminded them that they allocated \$17.2 million at the start of the November 17, 2020 meeting. He explained after \$5.5 million was further allocated at that meeting the reserve that was left was about \$11.6 million. After the \$9 million increase from that night's meeting there would be \$2.6 million left going forward.

Mayor Romero thanked Mr. Ortega and the Council for making the funding such a priority and, if the recommendations were approved that evening, putting \$70 million of the total \$96 million received by the City in CARES funds into the hands of workers, families, small businesses, nonprofits, arts, culture, entertainment venues and the general community was amazing. She said they were critical dollars that were helping to support needs for food, rental and utility assistance and more. She did not think they were discussing that enough as a City nor was the business community giving the City enough credit for those funds.

Mayor Romero said the relief package was specifically designed to help with any heartache and any loss of revenue from small businesses and for their workers. She expressed pride and happiness regarding what the Mayor and Council had already done and what they planned to do, as well as hope that Governor Ducey and Congress would follow suit in providing additional financial assistance to the community like the City of Tucson had. She asked that they not let that go unnoticed and though they were asking the community and small businesses to sacrifice, it was not sacrifice for sacrifice's purposes rather it was for the wellbeing of the community and hospitals to not be overwhelmed. She expressed sincere hope that the step they took with the proclamation and curfew would make a difference to put a dent in the spread of COVID-19. She said she knew public health experts were still advocating for much more drastic measures due to concerns over hospital overwhelming.

Council Member Kozachik agreed that \$70 million of “doing” was significant and he was glad the Mayor acknowledged they were stepping up and walking the talk. He said the new dollars would come at a critical time since they were instituting a curfew which may have an impact on some local businesses, so it was important that they institute new funding. He reiterated his question regarding how to get the funds out the door quickly, and noted it was a few weeks away from the holiday season and they could not go through that torturous process they went through before and have the agencies they had been working with sitting on those dollars when the calendar flipped to the first of the year. He asked the City Manager what protocols he could suggest from his office to guarantee once they were approved, they moved into the hands that needed them.

Council Member Kozachik also said one of the conditions that was built into some of the FPA’s indicated that if a recipient had already received Payroll Protection Program (PPP) they could not qualify for the City’s funds, adding those dollars were long gone. He would like the Council to reconsider that condition because applicants had spent those funds months ago and had current needs the new funds could serve.

Mayor Romero added specifically with the small business grants the limit had been ten thousand dollars and they might want to consider increasing it to twenty thousand dollars because there were some businesses that received less than ten thousand dollars so being able to consider the need and effect of the pandemic upon small businesses they should be able to be more flexible and provide additional support if a business was highly impacted. She said she knew the YWCA was ready with funds but invited the City Manager to answer Council Member Kozachik’s question.

Mr. Ortega noted one of the challenges of getting funds out quickly had been the bureaucracy of establishing the agreements with the partner organizations who had to go through their lawyers before. He suggested if the Mayor and Council were to grant him the authority to navigate amendments to the FPA’s directly with the partner organizations it would help to avoid further bureaucratic complications and delays. He also indicated he could give the Mayor and Council a weekly update on where the funds were going and his staff had communicated with the partner organizations that day to ensure they had the capacity to direct more funds, which they affirmed.

Mr. Ortega said the accountability needed to be clear and reiterated his willingness to provide weekly updates. He explained while he supported allowing or increasing access to grants for those who had been denied City funds in the past due to receiving PPP funds, he asked for the particulars to be hammered out that night so as to avoid the iterative process from taking up more time in processing the funds.

Council Member Lee explained she really understood what small restaurants and their waitstaff were going through because one of her first jobs was waiting tables in her parents’ small hometown diner. She expressed gratitude for the opportunity they had to provide financial relief paired with the potential impact of the curfew, especially because holiday tipping was a source of revenue for waitstaff and restaurant workers. She asked

the City Manager if it were possible to amend criteria for funding to include a checkbox stating the applicant was specifically affected by the policy decision of the curfew and if there was any way to quantify and track that impact so they could tie the results to the action they were taking. She also asked if there was anything, they could do with the remaining CARES Act funds to directly help the hospitals and their immediate needs.

Mr. Ortega said they could certainly include criteria involving a checkbox and description of impact, but it could be difficult to prove, and he reminded the Mayor and Council they were trying to stay objective, so all businesses were treated equally. He said he was happy to do that but asked for flexibility to develop language with the Staff to be included in the FPA amendment(s) and stated they would try their best to accomplish that. He also said it might place additional burden on the organizations in terms of implementation, but he understood the spirit and would try to encapsulate it moving forward. He also indicated funding for hospitals would have to be a function of the COVID-related expenses. He said he would explore that and challenge the staff to examine what opportunities might be there for allocating the remaining \$2.6 million. He reminded the Mayor and Council they were going to be meeting again on December 8, 2020 and offered to have more information for their consideration at that time.

Mayor Romero said the hospitals received CARES Act money directly, as did local clinics.

Vice Mayor Cunningham asked for a detailed accounting of what they had spent thus far. He indicated he did not want to overkill but suggested they take a cut of the testing funds, as well as combining and thereby reducing the overall arts funding, so they could have four to five million dollars on hand for distributing and administering vaccinations.

Mayor Romero said vaccination efforts would be federally funded and distributed to the states and the City could not pay for vaccinations.

Council Member Fimbres noted there could be federal funding distributed along with the vaccination program.

Vice Mayor Cunningham stated he hoped so and he was not talking about purchasing vaccines but about the administrative costs of administering them and to make them as free and accessible as possible. He hoped the testing sites they established could be used for vaccine distribution.

Mayor Romero said the testing sites were selected by the State in collaboration with the Pima County Health Department, that TMC and UMC Banner both had testing sites, and anything related to vaccination was outside of the City's control.

Vice Mayor Cunningham accepted that and continued to discuss small business funding. He suggested they may want to look at square footage of locations since leases were higher based on square footage, as well as past sales tax revenues so they could



identify businesses that had contributed substantially to the City's general fund but were then struggling, since it would be in the City's interest to help them out. He also suggested considering the sectors that would be most affected by the curfew including, but not limited to, bars, arcades, bowling alleys, mini-golf, theaters and performance arts venues, and indicated he wanted to direct the \$2.5 million there. He asked for an explanation regarding how the \$2million they recently allocated for funding and the additional \$4 million from that night were allocated and what exactly the funds were for.

Mr. Ortega explained they were using about \$1.5 million per month at the Udall testing center to cover the cost of testing.

Vice Mayor Cunningham interrupted Mr. Ortega to say that was enough explanation and he supported community testing. He said people across the nation said to combat COVID there had to be access to free testing and they kind of had that in Pima County. He said though they got backed up, at that moment you could get one within twenty-four hours and so he thought they were on the right track and he liked where the City Manager was in his thoughts about the last \$9 million. He expressed support for the City Manager doing whatever he needed to do to balance the City's interests and the general fund.

Council Member Fimbres asked the City Manager for a breakdown of the allotment for each testing site. He also suggested adding five hundred thousand dollars to Vice Mayor Cunningham's suggestion of \$2.5 million for small businesses to make it an even \$3 million. He said that would leave \$2.1 million and would provide support for the people impacted by the curfew. He also expressed support for the City Manager to do whatever he needed to do to get the funding out quickly, affirming the concerns of Council Member Kozachik. He stated they had already lost restaurants to closure because they did not get the funding they needed.

It was moved by Council Member Fimbres, duly seconded, that they accept the City Manager's recommendations except for changing the amount for small businesses from \$2.5 million to \$3 million, and to give the City Manager the leeway he needed to get the funds out quickly.

Council Member Santa Cruz addressed the Vice Mayor's comment regarding access to testing within twenty-four hours and said she tried that day to get an appointment and all of the testing centers were booked one week out so she had to go in and pay to get a test done because she could not wait a whole week. She said they still needed to make a lot of improvements regarding turnaround time and appointments for testing. She also said a lot of the criteria they were discussing was going to add steps to the process that would take more time. She added what she heard from some of the people helping to distribute the funds was they were not enough to cover the administrative fees of dispersing them so while they were talking about getting the funds out quickly they were not adequately supporting the back-end processes of administering the funds and providing funding for the people who do that work.

Council Member Santa Cruz said there were still a lot of businesses that had not received any PPP or other funds, and while she knew that money had run out she wanted them to continue to give preference to folks who did not receive any other funds and then later to consider businesses that had already received funds but were again in dire straits. She also suggested they should not forget about transit needs, which they had voted to make free through the end of December and indicated the Transit department was looking for direction regarding returning to collecting fees. She asked the City Manager to investigate possibilities of extending the free transit program for another two to three months while they waited to learn what the federal government was going to do regarding further funding. She said the people depending on the City's transportation system were the ones most impacted and most vulnerable and it was a small way they could take that weight off their shoulders.

Council Member Fimbres said supported Council Member Santa Cruz' suggestion regarding transit allocation. He said the poorest and most vulnerable populations that needed public transit to get to the doctor and the grocery store would experience additional stress from the curfew and agreed they needed to look at that. He reiterated his motion.

Mayor Romero included the preference Council Member Santa Cruz suggested regarding businesses that had not yet received funds. She reiterated businesses, families and individuals who had already received funding should also not be eliminated from receiving more because that funding happened many months ago and they were hurting again with additional stress. She asked the City Manager if he had a sense of the direction they were giving him.

Mr. Ortega affirmed he did but said he also needed to make a few comments and ensure they had clarity. He said he was fine with changing criteria but needed explicit direction so he would try to provide a framework of what he heard and how he planned to approach it. He addressed Vice Mayor Cunningham's suggestion of considering businesses' square footage and said the best way to add a metric there would be to tie it to sales tax because the sales tax generated by a business could be of value as a checkmark.

Mayor Romero said she would hate to add additional caveats and have businesses required to show proof of square footage and sales tax because it went against the idea of getting the funds out as quickly as possible. She said there was already a process in place and application used by all the partner organizations so if they began changing the particular logistics it would take longer for the funds to get out. She supported expanding the amount of the funding and encouraging individuals and businesses to reapply if they previously received funds but discouraged adding extra steps and time to the application process.

Mr. Ortega expressed complete agreement and explained that was why he was reviewing the different components of the motion and its amendments. He also said he would try to fulfill Council Member's Lee's suggestion of possibly tracking the impact upon applicants, but it would be challenging. He offered if the Mayor and Council did not

want to review each suggestion but instead keep the criteria the same with the exception of the amount allocated and whether folks had received assistance in the past then it would make it easier for him but he was seeking clarity. He saw no problem with giving priority to those who had not yet received funding without discounting those who had, they would just have to create a point system for that with the partner organizations.

Mayor Romero indicated the applications for the programs were already out and since the response was so overwhelming, particularly for the Workers and Families program, the Women's Foundation was already circling back to previous applicants who had not received funding in the first round. She said everyone was being asked if they were impacted by COVID-19 and so to add a question of "how" would set the process back and require people to reapply so she suggested they should not add more questions in that regard.

Council Member Kozachik agreed and said one of the problems at the State level, in terms of the eviction support program, was that the application was so cumbersome. Many applicants did not even have the documentation needed to apply. He said the Governor had millions of dollars sitting in his coffers and was saying, "All you have to do is apply," but they cannot just apply. He said whatever they needed to do to expedite the process was what they needed to do and adding criteria was only going to make the process more difficult for people to get the cash in hand.

Council Member Lee clarified she had not asked for that to be part of the criteria for additional funding, but more so a checkbox so they could track internally how their curfew decision had been offset by the funds. She said her intention was to clarify for them to be able to tell the story of how they were helping in response to community member's concerns about the impact of the curfew.

Mr. Ortega said he appreciated Council Member Lee's clarification and explained he thought she meant it as a requirement but if it was purely for tracking, they could do that with no problem. He said he also appreciated Council Member Kozachik clarifying the difference between the impact from COVID versus the impact from the curfew, which he affirmed they could also do. He said they could continue down the track of increasing the amount of funding, prioritizing applicants who had not yet received funding and including those who had.

Vice Mayor Cunningham expressed frustration with the first round of CARES Act funding and explained there was a business in Ward 2 that operated under one EIN number but operated three separate businesses including entertainment venues and it was a tourist destination. He said he got hammered by COVID and they were cheated by the last round of funding so he implored the partner organizations to figure it out because he believed the business should have originally received funding. He said the Mayor and Council should not pick and choose which businesses get or do not get funding, but that was where his frustration arose from because certain businesses felt left out. He said that particular business was strong, and might survive anyway, but it was an establishment in Tucson and was one of his favorites.

Mayor Romero said he should make sure they had the information for both the arts and entertainment funding through the Tucson Foundation and the small business funding through the YWCA.

Vice Mayor Cunningham said because they had three businesses under one EIN they had too many employees and so they had to figure out a way to allow people to apply if they were operating under one EIN and were operating five different sites so even smaller franchisees could benefit. He said those were part of the reasons he had considered his suggested tweaks. He noted Ward 2 did not receive a lot of funding and while that was okay, he also wanted to stand up for his constituents.

Mr. Ortega assured the Mayor and Council he was clear on the direction to make the two modifications they had discussed, which would not make the process more complex, and he would provide weekly updates moving forward. He also assured them staff would do whatever they could to get the money out the door quickly and reminded them of the request in his memo to authorize reimbursement of the General Fund for eligible salary expenses of all unspent COVID Relief Funds. He explained he was asking for the reimbursement to buy the City more time while riding the second wave of the pandemic into the next year. He said the expenditures would still be for COVID-related costs but would give him the opportunity to reimburse eligible salary expenses.

Council Member Fimbres expressed support for the City Manager's request and added it as a friendly amendment to his motion. Council Member Kozachik also agreed to the amendment as the seconder.

Mr. Ortega added the Mayor and Council's understanding of the importance of the CRF reserves could not be overstated. He thanked them for their leadership in setting aside \$33M of the initial \$95M that was allocated so that they could have flexibility for the second wave.

Mike Rankin, City Attorney, acknowledged that everyone wanted to see the revised Ordinance from the 2<sup>nd</sup> agenda item as soon as possible and relayed he had already started making the changes for conformity. He said given the effect of the action, the curfew would not start until December 4, 2020, and the changes not only had to be formalized by his office but also processed through the City Clerk's office and signed by the Mayor. He said he wanted them to know that it would likely not be finalized and made available to the public until the following morning.

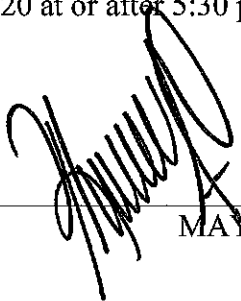
Mayor Romero thanked her colleagues for making themselves available and having a discussion sooner rather than later. She expressed appreciation for their thoughts and their ability to act unanimously and in solidarity with one another. She said she brought a different proposal to the table but she was willing to go a different route as long as they did something because the status quo was not good for any individual, small business nor the City of Tucson in terms of losing lives and

businesses. She again expressed gratitude for the collective action on the economic relief and wished everyone a good and safe rest of their week.

The motion to approve the City Manager's recommending, adding an additional \$1million to the Small Business Grants for a total of \$3 million and authorize the City Manager to proceed with securing the required signatures for the Agreements without having to return to the Mayor and Council for approval was passed by a roll call vote of 6 to 0 (Council Member Durham absent/excused)

**4. ADJOURNMENT: 7:06 p.m.**

Mayor Romero announced the next regularly scheduled meeting of the Mayor and Council would be held on December 8, 2020 at or after 5:30 p.m.

  
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MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

**CERTIFICATE OF AUTHENTICITY**

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 1st day of December 2020, and do hereby certify that it is an accurate transcription.

  
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DEPUTY CITY CLERK

RWR:aaa:des